

BILL NO. S-91-06- *SP*

SPECIAL ORDINANCE NO. S- *184-91*

AN ORDINANCE approving Contract 91-03, RESTORATION OF MISC. UTILITY CUTS MADE BY WATER UTILITY between MERGY CONSTRUCTION INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. That the Contract 91-03, RESTORATION OF MISC. UTILITY CUTS MADE BY WATER UTILITY by and between MERGY CONSTRUCTION INC. and the City of Fort Wayne, Indiana, in connection with the Board of Public Works and Safety, is hereby ratified, and affirmed and approved in all respects, respectfully for:

the restoration of miscellaneous utility cuts made by water utility;

involving a total cost of Thirty-Nine Thousand Three Hundred Ninety and no/100 Dollars (\$39,390.00).

SECTION 2. Prior Approval has been requested from Common Council on MAY 28, 1991. Two copies of said Contract are on file with the Office of the City Clerk and made available for public inspection, according to law.

SECTION 3. That this Ordinance shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

*[Signature]*  
Councilmember

APPROVED AS TO FORM  
AND LEGALITY

*J. Timothy McCaulay*  
J. Timothy McCaulay, City Attorney



## CONSTRUCTION CONTRACT

Board Order 45-91

Contract 91-03

Work Order 64257

THIS CONTRACT made and entered into in triplicate this 12 day of JUNE, 1991, by and between MERGY CONSTRUCTION INC., herein called **CONTRACTOR**, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works and Safety, herein called **OWNER**;

**WITNESSETH**, that the **CONTRACTOR** and the **OWNER**, for the considerations hereinafter named, agree as follows:

### ARTICLE 1: SCOPE OF WORK

**CONTRACTOR** shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

**TO REPAIR UTILITY CUTS THAT WERE MADE BY THE WATER UTILITY.**

All in accordance with the specifications of Contract Number **91-03**, prepared by the Fort Wayne Water Engineering Department, Street Engineering Department, and Right of Way Cut Permit Specifications, and according to the Detailed Specifications and Conditions contained within the Bid Specifications for Contract 91-03.

### ARTICLE 2: THE CONTRACT SUM

The owner shall pay **CONTRACTOR** for the performance of the contract, the unit price sum of **\$39,390.00 (THIRTY NINE THOUSAND THREE HUNDRED NINETY DOLLARS AND NO CENTS)**. In the event the amount of work is increased or decreased by **OWNER**, the contract sum shall be increased or decreased according to the unit price schedule set forth in the **CONTRACTOR'S** Proposal.

### ARTICLE 3: PROGRESS PAYMENTS

The **OWNER** shall make payments on account of the contract as provided herein, as follows:

Monthly progress payments will be made by **OWNER** upon submission of a statement of quantities of work completed and/or materials supplied to the job site as of the end of each month. On or about the **15th day of the following month**, ninety (90%) percent of the value of the work performed up to the first day of that month (based on the contract price of labor and materials incorporated in the work) and as estimated by the **CONTRACTOR** and approved or revised by the **Engineering Department** of the **OWNER** less the aggregate of previous payments, will be paid by **OWNER** to the **CONTRACTOR**.



#### **ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due at the time the work is fully completed and accepted and the contract is fully performed.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works and Safety** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection. When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works and Safety**, which shall issue a **final certificate** stating that the work provided for in this Contract has been completed and is accepted. Thereupon, the **entire balance** of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material, or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

#### **ARTICLE 5: WORKMEN'S COMPENSATION ACT**

The **CONTRACTOR** will furnish immediately a certificate from the **Industrial Board of the State of Indiana**, that he has complied with the **Workmen's Compensation Act** in accordance with **Statutes of the State of Indiana** and **Ordinances of the City of Fort Wayne**.

Any judgment rendered against the **City of Fort Wayne** in any suits for Damages for injury to real or personal property, or for injury sustained by any person growing out of any act or doing of **CONTRACTOR**, or its agents, employees or workmen or any judgment of any court or award of any **Board of Arbitrators** or of the **Industrial Board of the State of Indiana** rendered against the **City of Fort Wayne** in any suit or claim arising under said **Workmen's Compensation** for accidental injuries or death suffered by his employees or the employees of any Subcontractor(s) in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said **CONTRACTOR**, shall be conclusive against **CONTRACTOR** as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that **CONTRACTOR** indemnify and hold harmless **OWNER** in the premises.

#### **ARTICLE 6: NONDISCRIMINATION OF LABOR**

The **CONTRACTOR** further agrees to be bound by **Section 15-13 (as amended)**, of the **Code of the City of Fort Wayne, Indiana** of 1974, passed by the **Common Council of the City of Fort Wayne, Indiana** as **General Ordinance No. G-34-78 (as amended)** on December 12th, 1978. The successful bidder shall file a **Manpower Utilization Report** for this project with the **Compliance Office** within ten (10) days after completion of construction or upon request of the **Office of Compliance**.



## **ARTICLE 7: PREVAILING WAGE SCALE**

The **CONTRACTOR** agrees to pay, and also require of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the **Statutes of the State of Indiana**, and the **Ordinances of the City of Fort Wayne** according to the applicable wage scale as included in the bid documents.

## **ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT**

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids for Contract No. **91-03**
- b. Instructions to Bidders for Contract 91-03
- c. Contractor's Proposal dated 24 APRIL 1991
- d. Drawings
- e. Supplemental Specifications for Contract No. 91-03
- f. Workman's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.
- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Comprehensive Liability Insurance Coverage.
- l. Form 96.

## **ARTICLE 9: GUARANTEE OF WORKMANSHIP**

At the time of execution of this contract, the **CONTRACTOR** shall furnish a **Performance and Guaranty Bond** in favor of the **City of Fort Wayne** in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of one (1) year following written acceptance of the work by the **OWNER**.

## **ARTICLE 10: INDEMNITY**

**CONTRACTOR** shall furnish to **OWNER**, within ten (10) days of the date hereof, a certificate from an insurer acceptable to **OWNER** showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to **OWNER** and in accordance with the **Statutes of the State of Indiana**.

#### **ARTICLE 11: ADJUSTMENTS OF DISPUTES**

All questions or controversies which may arise between the **CONTRACTOR** and the **OWNER** under the provisions of this Contract shall be subject to the decision of the **Director of Board of Public Works and Safety** of the **OWNER**, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of work covered by this Contract will be permitted except on prior written authorization by the **Board of Public Works and Safety**.

#### **ARTICLE 12: COMPLETION DATE**

The **CONTRACTOR** agrees to complete the work specified in the contract within Sixty (60) consecutive calendar days after having been ordered by the **OWNER** to commence work under this contract.

#### **ARTICLE 13: COUNCILMANIC APPROVAL**

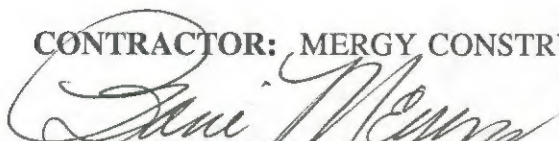
This Agreement, although executed on behalf of the **OWNER** by the **Mayor and Board of Public Works and Safety** of the **City of Fort Wayne, Indiana**, shall not be binding upon the **OWNER** unless and until the same shall have been ratified and approved by the **Common Council** of the **City of Fort Wayne, Indiana**, and should said **Common Council** fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

#### **ARTICLE 14:**

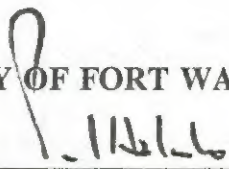
This contract is governed by Laws of the State of Indiana.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.


CONTRACTOR: MERGY CONSTRUCTION INC.

  
By: BONI MERGY, PRESIDENT


CITY OF FORT WAYNE

By:   
Paul Helmke, Mayor

BOARD OF PUBLIC WORKS AND SAFETY

By:   
Charles E. Layton, Director  
Public Works

By: \_\_\_\_\_  
E. Sharon Banks

By:   
Douglas M. Lehman, Director  
Administration and Finance

ATTEST:

  
Patricia Crick, Clerk



ACKNOWLEDGEMENT

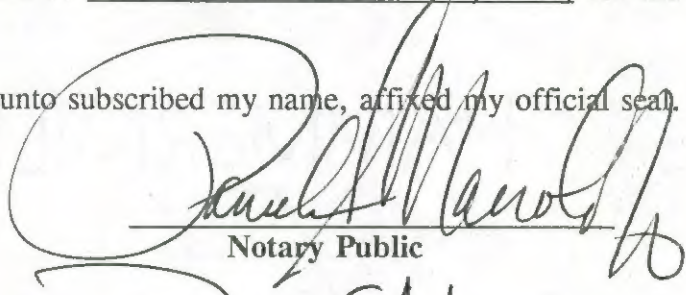
STATE OF INDIANA)

SS:

COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 11<sup>th</sup> day of June, 1991, personally appeared the within named BONI MERGY who being by me first duly sworn upon his oath says that she is the **PRESIDENT** of MERGY CONSTRUCTION INC., and as such duly authorized to execute the foregoing instrument and acknowledged the same as the voluntary act and deed of MERGY CONSTRUCTION, INC., for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

  
Notary Public

PAMELA S. MANVILLE  
Printed Name of Notary

My Commission Expires:

3-19-93

Resident of Allen County.

ACKNOWLEDGEMENT

STATE OF INDIANA)  
SS:  
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State, this 12<sup>th</sup> day of June, 1991, personally appeared the within named **Paul Helmke, Charles E. Layton, E. Sharon Banks, Douglas M. Lehman, and Patricia Crick**, by me personally known, who being by me duly of sworn said that they are respectively the **Mayor of the City of Fort Wayne, and Director, Members, and Clerk of the Board of Public Works and Safety of the City of Fort Wayne, Indiana**, and that they signed said instrument on behalf of the City of Fort Wayne, Indiana, with full authority so to do and acknowledge said instrument to be in the voluntary act and deed of said **City** for the uses and purposes therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my official seal.

Carolyn S. Newport  
Notary Public

CAROLYN S. NEWPORT  
NOTARY PUBLIC STATE OF INDIANA  
ALLEN CO.  
MY COMMISSION EXPIRES JUNE 21, 1991  
ISSUED THRU INDIANA NOTARY ASSOC.

\_\_\_\_\_  
Printed Name of Notary

My Commission Expires: \_\_\_\_\_

Resident of \_\_\_\_\_ County.



Read the first time in full and on motion by Burns, seconded by Redd, and duly adopted, read the second time in full and referred to the Committee on City Matters (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, 19\_\_\_\_, the \_\_\_\_\_ o'clock \_\_\_\_\_ M., E.S.T.

DATED: 6-25-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Burns, seconded by Redd, and duly adopted, placed on its passage. PASSED ~~LOST~~ by the following vote:

	AYES	NAYS	ABSTAINED	ABSENT
TOTAL VOTES	<u>9</u>			
BRADBURY	<u>✓</u>			
BURNS	<u>✓</u>			
EDMONDS	<u>✓</u>			
GIAQUINTA	<u>✓</u>			
HENRY	<u>✓</u>			
LONG	<u>✓</u>			
REDD	<u>✓</u>			
SCHMIDT	<u>✓</u>			
TALARICO	<u>✓</u>			

DATED: 7-9-91

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL)

(SPECIAL) (ZONING MAP) ORDINANCE RESOLUTION NO. S-184-91

on the 9th day of July, 1991

Sandra E. Kennedy ATTEST  
SANDRA E. KENNEDY, CITY CLERK

Samuel J. Talarico SEAL  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th day of July, 1991 at the hour of 4:00 o'clock P. M., E.S.T.

Sandra E. Kennedy  
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 15th day of July, 1991, at the hour of 6:15 o'clock P. M., E.S.T.

PAUL HELMKE  
PAUL HELMKE, MAYOR



Admn. Appr.

TITLE OF ORDINANCE: Contract #91-03, Restoration of Misc. Utility  
Cuts made by Water Utility

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract #91-03, is for the Restoration of Misc.  
Utility Cuts made by Water Utility. Mergy Construction is the contractor.  
PRIOR APPROVAL RECEIVED ON 5/28/91.

EFFECT OF PASSAGE: Improved street conditions.

EFFECT OF NON PASSAGE:

*D-91-06-48*

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$39,390.00

ASSIGNED TO COMMITTEE:



BILL NO. S-91-06-48

REPORT OF THE COMMITTEE ON CITY UTILITIES

PAUL M. BURNS, CHAIRMAN  
CHARLES B. REDD, VICE CHAIRMAN  
EDMONDS, LONG, SCHMIDT

WE, YOUR COMMITTEE ON CITY UTILITIES TO WHOM WAS

REFERRED AN (ORDINANCE) (~~RESOLUTION~~) approving Contract  
91-03, RESTORATION OF MISC. UTILITY CUTS MADE BY WATER  
UTILITY between MERGY CONSTRUCTION CIN. and the City of Fort Wayne,  
Indiana, in connection with the Board of Public Works and  
Safety

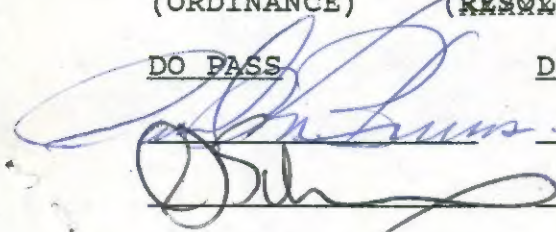
HAVE HAD SAID (ORDINANCE) (~~RESOLUTION~~) UNDER CONSIDERATION  
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID  
(ORDINANCE) (~~RESOLUTION~~)

DO PASS

DO NOT PASS

ABSTAIN

NO REC

DATED: 7-9-91.

Sandra E. Kennedy  
City Clerk